



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,257	10/20/2003	Mark Beaumont	DB001070-000	2891
57694 7550 02/19/2008				
JONES DAY				
500 GRANT STREET				
SUITE 3100				
PITTSBURGH, PA 15219-2502				
EXAMINER				
HUISMAN, DAVID J				
ART UNIT		PAPER NUMBER		
2183				
MAIL DATE		DELIVERY MODE		
02/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/689,257	Applicant(s) BEAUMONT, MARK
Examiner DAVID J. HUISMAN	Art Unit 2183

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-20 and 26, as set forth in the final rejection.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/David J. Huisman/
Primary Examiner, Art Unit 2183

Applicant argues on page 8 of the after-final remarks, in substance that:

"...the examiner takes undue liberties with the definition of "diagonal." The examiner asserts that the "diagonal" from the upper left corner to lower right corner (i.e., 0, 9, 18, 27, 36, 45, 54, 63) is actually two diagonals (i.e., a plurality of diagonals). The examiner points to no teachings in Kirsch to support his assertion that a single diagonal can be treated as two diagonals. In fact, the teachings of Kirsch are repugnant to the notion that a single diagonal is actually a plurality of diagonals. For example, in Fig. 8a and paragraph [0163], the diagonal 804 is identified as "a leading diagonal" and not "a plurality of leading diagonals" as asserted by the examiner...

Absent any teaching in Kirsch that Kirsch discloses that a single diagonal can be considered to be a plurality of diagonals, the examiner's bald, hindsight assertion cannot serve as the basis for a rejection under section 102. If the examiner remains of the opinion that the identified diagonal of Kirsch can be treated as two diagonals, the examiner is respectfully requested to place into the record citations to those portions of Kirsch that would lead a person of ordinary skill in the art to conclude that a single diagonal may be considered to be a plurality of diagonals so that this issue can be fully addressed on appeal."

This argument, while fully considered, has been deemed non-persuasive by the examiner because one of ordinary skill in the art does not need to rely on explicit disclosure in Kirsch to realize that Kirsch's array includes multiple diagonals. The term "diagonal" has no meaning in the art more special than its everyday meaning. A diagonal, as is known and as used in Kirsch, is a line that joins at any two non-adjacent vertices. Clearly, the examiner's interpretation is consistent with this meaning. Furthermore, although Kirsch refers to the "full" diagonal as a leading diagonal (and the examiner certainly agrees that the leading diagonal is a diagonal), this does not mean that the diagonal cannot be interpreted as containing sub-diagonals. That is, though Kirsch chose to use the word "diagonal" in the specification, it would have been just as correct for Kirsch to refer to that diagonal as multiple diagonals. The examiner asserts that it is not what the reference explicitly says, but what the reference is that is important. And, applicant's claimed invention reads on what Kirsch's invention is, an array with multiple diagonals used in a transpose operation.